argued that Verizon treats FX traffic as local, charging reciprocal compensation for terminating calls to its FX customers. We recognized this issue and stated:

> We are troubled that Verizon insists that reciprocal compensation should not be applied to virtual NXX traffic, while at the same time charging reciprocal compensation for its own FX traffic. . . . witness Haynes attributes this to the fact that Verizon's billing systems are presently configured to determine whether a call is local or not, based upon the number dialed. He states that Verizon has not as of yet examined the possibility of separating FX traffic from local traffic dialed to the same NPA/NXX.

PSC-02-1248-FOF-TP, p. 32. Verizon also addressed this matter and maintains that to the extent that another carrier's customer originates a call to a Verizon FX customer, Verizon agrees, consistent with its position here, that it should not charge the other carrier reciprocal compensation to terminate the call. Also, as noted above, Verizon claims that it now have a method to accurately track and bill traditional FX and VNXX traffic consistent with our order in Docket No. 000075-TP. Moreover, Verizon has testified that it is prepared to work with GNAPs to implement a method so that traffic can be properly billed.

In addition, we note that in our Order Denying Motions for Reconsideration, in Docket No. 000075-TP, we addressed GNAPs' argument that the LCA is fundamental to the VNXX issue. Specifically, we stated:

> . . . while the originating carrier could be viewed as integral to the originating point of a call, we disagree that there is conflict between our decision on the default local calling area and our decision that the jurisdiction of a call is to be determined by the originating and terminating points of a call. These decisions were based upon different factual situations and are supported by different rationale.

Last, we clearly stated that we disagreed with the ALECs' position that the jurisdiction of traffic should be determined based upon the NPA/NXXs assigned to the calling and called parties. Instead, we stated that the classification of traffic as either local or toll has historically been, and should continue to be, determined based upon the end points of a particular call. Moreover, we agreed with Verizon witness Haynes that traffic that originates in one local calling area and terminates in another local calling area would be considered intrastate exchange access under the FCC's revised Rule 51.701(b)(1). As such, we concluded that VNXX/FX traffic would not be subject to reciprocal compensation pursuant to Rule 51.701(b)(1).

The issue regarding the appropriate intercarrier compensation for non-ISP VNXX/FX traffic was sufficiently addressed in our generic docket. Moreover, GNAPs acknowledged that it has not presented any new facts in this arbitration that would lead us to a different conclusion than that reached in Docket No. 000075-TP. Since the parties could not resolve this matter via negotiation, we find that our conclusion from Docket No. 000075-TP should apply here. GNAPs will be permitted to assign telephone numbers to end users physically located outside the rate center to which the telephone number is homed. In addition, intercarrier compensation for non-ISP calls to these numbers will be based upon the end points of the particular calls. Non-ISP calls terminated to end users outside the local calling area in which their NPA/NXXs are homed are not local calls. Therefore, carriers will not be obligated to pay reciprocal compensation for this traffic; rather, access charges will apply. Moreover, virtual NXX traffic and FX traffic will be treated the same for intercarrier compensation purposes (i.e., access charges should apply).

IX. CHANGE-IN-LAW PROVISION

ARGUMENTS

Though GNAPs acknowledges that in Verizon's proposed Interconnection Agreement it grants the right to renegotiate the reciprocal compensation obligations if the current law is overturned or otherwise revised, GNAPs argues that it is inadequate. Verizon argues, however, that GNAPs has not demonstrated that the general change-in-law provision is inadequate to address any decision that modifies the ISP Remand Order.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of unresolved issues in negotiation of interconnection agreement with Verizon Florida Inc. by US LEC of Florida Inc.	DOCKET NO. 020412-TP ORDER NO. PSC-03-0762-FOF-TP ISSUED: June 25, 2003

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

FINAL ORDER ON PETITION FOR ARBITRATION

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On May 10, 2002, US LEC of Florida Inc. (US LEC) petitioned the Commission to arbitrate certain unresolved terms and conditions of an interconnection agreement with Verizon Florida Inc. (Verizon). Verizon filed a response and the matter was set for hearing. At the issue identification meeting, 9 issues were identified by the parties to be arbitrated. Prior to the administrative hearing, the parties resolved one issue.

The administrative hearing was held on February 6, 2003. At the administrative hearing the parties agreed to stipulate into the record all prefiled testimony and waive their rights to cross-examination. This Order addresses the remaining arbitrated issues.

I. INTERCONNECTION POINT SELECTION

This issue addresses whether US LEC is permitted to elect a single interconnection point(IP) per local access and transport area (LATA), to select the interconnection method, and to require billing over interconnection trunks for the proposed agreement. However, when the term "terminating party" is not applicable, such as in the case of traffic bound for ISPs, where a higher degree of specificity is required for clarification, the parties are free to use an additional established term or notation, defined in the glossary of their agreement, for clarification; e.g. *not subject to reciprocal compensation.

C. Decision

We find that all references in the Agreement to a party that is terminating traffic shall refer to that party as the "terminating party." Further, all references to the party "receiving" traffic or to the "receiving party" shall refer instead to the party "terminating" traffic and to the "terminating party" with terms or notations added solely for purposes of clarification.

V. COMPENSATION MECHANISM FOR VIRTUAL NXX/FX TRAFFIC

In this issue the Commission is presented with two matters for determination. First, the Commission is to determine if the parties should pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. Second, the Commission is to determine if the originating carrier should be able to charge originating access for the aforementioned traffic.

A. Arguments

In its brief, US LEC indicates that the parties should pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. Further, US LEC believes that the originating carrier should not be able to charge originating access for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. US LEC witness Montano states that the Commission has not resolved the issue of whether reciprocal compensation is payable on virtual NXX traffic, and US LEC wants the Commission to do so in this proceeding. Witness Montano believes that Verizon is obligated to pay intercarrier compensation for all calls originated by Verizon customers to US LEC lines with "NXX" codes associated with the calling party's local calling area. Witness Montano adds that ". . . calls are conventionally rated and routed throughout the U.S. telephone industry based upon the NXX codes of the originating and terminating numbers. US LEC submits that there is no reason to deviate from that convention now." In explaining US LEC's position witness Montano states:

> Standard industry procedure provides that each NXX code is associated with a particular rate center within a local calling area. (A single rate center may have more than one NXX code, but each code is assigned to one and only one rate center.) This uniquely identifies the end office switch serving the NXX code, so that each carrier that is routing a call knows which end office switch to send the call to. However, it is not uncommon for NXX codes to be assigned to customers who are not physically located in the local calling area where the NXX is "homed." When an ILEC provides this arrangement, it typically is called foreign exchange or FX service. This type of arrangement also may be referred to as "Virtual NXX" because the customer assigned the telephone number has a "virtual" presence in the calling area associated with that NXX. Calls to these customers are still routed to the end office switch associated with the NXX code, but then are routed within the terminating carrier's network to the called party's actual physical location.

US LEC witness Montano believes that deviating from the historical practice of rating a call based upon the NXX codes of the originating and terminating number would give Verizon the ability to arbitrarily reclassify local calls as toll calls. Witness Montano states that this is due to the fact that under Verizon's proposed language, it would be nearly impossible and much more economically burdensome for US LEC to utilize virtual NXXs in the provision of service to its customers.

US LEC witness Montano affirms that Virtual NXXs are used by carriers to provide a local number to customers in calling areas in which the customer is not physically located. Witness Montano contends that if the Commission adopts Verizon's language and allows Verizon to avoid rating calls based on the NXX of the originating and terminating numbers, calls to "virtual NXX" customers would effectively be reclassified as toll calls and Verizon would no longer be obligated to compensate US LEC for terminating what for decades have been rated as simple local calls.

US LEC witness Montano states that the only costs that Verizon incurs on locally dialed calls are the transport and switching charges required to bring traffic to the interconnection point between Verizon and US LEC; therefore, it would be inconsistent and anti-competitive to allow Verizon to charge US LEC originating switched access charges for calls going to a particular NXX code. US LEC witness Montano believes that "Verizon would double-recover for carrying such traffic and it would also be compensated for cost not incurred."

US LEC witness Montano testifies that there are two main technical reasons why the Commission should find that calls should continue to be rated as local or toll calls based on the NXX codes of the originating and terminating parties rather than on the end points of the call. First, witness Montano states that there is no practical, cost-effective way for the parties to segregate the disputed traffic from other locally dialed traffic. She contends that calls dialed to a number assigned a "virtual NXX" are indistinguishable from all other locally dialed traffic sent over local trunk groups. Witness Montano believes that US LEC would be required to expend considerable effort and absorb the cost associated with developing a program to separate the calls so that invoices submitted to Verizon do not include both types of calls, if Verizon's proposal is adopted by us.

Second, US LEC witness Montano asserts that because it has always been standard industry procedure for carriers to use NXX codes as rate center identifiers, the software in the LEC and ALEC switches and billing systems looks at the NXXs of the calling and called parties to determine whether a call is to be rated and billed as local or toll. Witness Montano believes that implementing Verizon's proposal would be unjustifiably burdensome, expensive, and disruptive. She adds:

> Adoption of Verizon's position would require US LEC to devote considerable effort and resources to undo the automated billing systems which have served as the basis for the design of modern switches and to maintain and assure the accuracy of a costly and burdensome alternative tracking system. Verizon's proposal would likewise necessitate the difficult and expensive step of requiring both parties to establish different ratings for a single telephone number; one set for end user purposes, the other for compensation purposes. Verizon has not addressed these serious considerations, and the Commission should evaluate them when determining whether a departure from industry practice is warranted.

Verizon witness Haynes believes that reciprocal compensation does not apply to calls that originate and terminate in different local calling areas, defined by reference to the actual originating and terminating points of the complete end-to-end communication. Witness Haynes adds:

> US LEC is confusing the rating of calls for the purpose of assessing end-user charges and the treatment of calls for intercarrier compensation purposes. Before the widespread introduction of local competition following the adoption of the 1996 Act, the most important type of

> intercarrier compensation was the access charges that interLATA long distance carriers paid to local telephone companies. Such intercarrier compensation has always been governed by the originating and terminating points of the end-to-end call, not the NPA-NXX of the calling and called party.
>
> The FCC has always held that reciprocal compensation does not apply to interexchange traffic, whether interstate or intrastate, but only to traffic that remains within a single local calling area. The FCC confirmed this in its April 2001 ISP Remand Order, when it ruled that reciprocal compensation does not apply to "exchange access, information exchange access, or exchange services for such access." 47 C.F.R. § 51.701 (b)(1).

Witness Haynes asserts that US LEC's proposal to require payment of reciprocal compensation by reference to the NPA-NXX of the called number, rather than the terminating point of the complete communication, is also inconsistent with our ruling on the same issue in our generic reciprocal compensation docket.

Verizon witness Haynes points out that we squarely held that reciprocal compensation depends on where a call physically originates and terminates, not on ". . . the NPA/NXXs assigned to the calling and called parties." The Commission, therefore, concluded that virtual NXX traffic is not subject to reciprocal compensation because it does not physically terminate in the same local calling area in which it originates. Witness Haynes interprets this finding to mean that whether a particular call is interexchange does not depend on the telephone number, but on whether the call remains within the local calling area or travels outside it.

Verizon witness Haynes believes that US LEC should pay originating access charges for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, even if the NXX of the called number is associated with the same local calling area as the NXX of the calling number, because it is a type of toll-free interexchange traffic. He elaborates:

> Even though a Verizon customer is placing an interexchange call, Verizon cannot impose toll charges because of the way in which US LEC has assigned telephone numbers to its customers. Instead, US LEC receives compensation from its customer. There is nothing necessarily wrong with that, but US LEC must compensate Verizon for this originating access service. Access charges have always been applied to toll-free traffic. In fact, this Commission approved its Staff's logic that "it seems reasonable to apply access charges to virtual NXX/FX traffic that originates and terminates in [sic] different local calling area."

Witness Haynes concludes that if US LEC uses a Verizon access service, as it does in the "virtual FX" arrangements at issue here, it must pay the tariffed access rates per the parties' agreement.

Verizon witness Haynes suggests that for purposes of billing reciprocal compensation, Verizon's billing system may be outdated because the method it uses to determine the amount of CLEC originated traffic sent to a FX number will not yield a correct answer for intercarrier compensation billing. Verizon's billing system assumes that the volume of CLEC originated traffic sent to a FX number on Verizon's network is very small. Witness Haynes contends that since the advent of local competition, the assumption that a customer's assigned NPA-NXX code most likely corresponds to the customer's physical location is often not a valid assumption in the case of traffic delivered to CLECs. Based on the information on page 5 of Exhibit 3, which refers to a study performed by Verizon, witness Haynes alleges that the volume of locally rated interexchange traffic being delivered to some CLECs makes up a significant percentage of the traffic delivered to those CLECs, which would justify Verizon's steps to develop methods to accurately measure the volume of CLEC traffic terminated to Verizon FX numbers.

Verizon witness Haynes states that Verizon conducted an inexpensive study to identify those calls that were originated by CLEC customers and terminated to Verizon FX numbers. He continues ". . . the study amounted to nothing more elaborate than matching call records that Verizon creates on calls originated from facility based CLECs to a list of telephone numbers that Verizon assigned to FX service lines." Witness Haynes maintains that this study was conducted with the intent of providing a means for Verizon to properly estimate the access revenue that CLECs would be entitled to for CLEC originated calls terminated to Verizon FX numbers.

Verizon witness Haynes states that Verizon also considered what approach would be required to properly account for traffic originated by Verizon customers which terminated to CLEC virtual FX numbers. Witness Haynes claims that two options were identified. The first option would be for the CLEC to conduct a study, similar to the one performed by Verizon, to quantify the number of Verizon customer originated minutes that were delivered to the CLEC virtual FX numbers. Witness Haynes adds that the second option would be for the CLEC to notify Verizon of the numbers it has assigned as virtual FX numbers. He continues:

> In this scenario, Verizon would modify its traffic data collection system to capture all traffic delivered to the NPA-NXXs associated with the virtual FX numbers. A data query could then be run to identify what portion of the traffic delivered to the NPA-NXXs was actually virtual NXX traffic. A billing adjustment would then be entered into each parties' billing system to properly account for the Verizon traffic delivered to the CLEC virtual FX numbers.

Further, witness Haynes notes that Verizon is prepared to work with US LEC to implement one of these options so that traffic can be properly billed.

In response, US LEC witness Montano claims that Verizon witness Haynes is incorrect in stating that NXX codes have not been used to establish intercarrier compensation. Witness Montano asserts that "Verizon rates and bills its customers based on the NXX codes of the calling and called party. If the call is rated as local, Verizon bills its customer for a local call; conversely, if the call is rated as toll, Verizon bills the customer for a toll call."

US LEC witness Montano also infers that Verizon's proposed "fix" has not been evaluated or approved by us. Witness Montano points out that how Verizon's "fix" will be implemented or monitored is not mentioned in the proposed interconnection agreement. Moreover, she asserts that "US LEC has no way of knowing whether Verizon's fix actually works. Verizon states that it is based on a traffic study conducted here in Florida, but nowhere does Verizon state that its fix has been implemented, is functioning smoothly and is accurate."

In his rebuttal testimony, Verizon witness Haynes claims that "the parties' sole disagreement for purposes of this proceeding is whether the NXX code should be used to determine intercarrier compensation, i.e., whether reciprocal compensation must be paid when the called party is actually located in a different local calling area from the calling party." Witness Haynes restates his contention that carriers must pay compensation based on the physical location of the called party, not the NXX code of the called party, which is generally associated with the local calling area of the calling party. Witness Haynes maintains that although the traffic he referred to in his direct testimony was interLATA traffic, the principle is the same for virtual FX traffic. Witness Haynes adds:

> If a local telephone subscriber originates a call to an interLATA FX number, the local exchange carrier delivers the call to the interexchange carrier's point of presence for onward transmission to a called party; the local exchange carrier is entitled to originating access for

> such a call, even though the call is rated as a local call. Likewise, in the case of virtual FX traffic, the local exchange carrier delivers the traffic to the CLEC's point of interconnection; the CLEC then delivers the call to the called party, which is by definition located in a different local calling area. Because the call is interexchange, no reciprocal compensation applies.

Based on US LEC witness Montano's testimony, witness Haynes believes that US LEC wants to be able to force Verizon to bear the cost of transporting virtual FX traffic without paying Verizon for that service.

Witness Haynes argues that contrary to US LEC witness Montano's claim, there is a practical, cost-effective way to ensure that the parties receive the appropriate intercarrier compensation. Witness Haynes claims that Verizon has offered to share this mechanism for separating FX traffic with US LEC, as long as US LEC supplies Verizon a list of virtual FX numbers. He states that ". . . determining the volume of FX traffic is neither burdensome, nor expensive, nor disruptive. If US LEC is unsure how to distinguish virtual FX traffic from local traffic, Verizon would be happy to cooperate with their technical personnel to implement a reliable system."

Verizon witness Haynes maintains that access charges should apply to virtual FX traffic. Witness Haynes reasons that a virtual FX arrangement, like traditional FX arrangements or other toll-free calling arrangements, allows a subscriber to receive calls from a distant exchange without the calling party incurring the toll charges that would normally apply. He adds:

> In place of those toll charges, the called party with FX service must pay for a Local Channel, interoffice transport, plus applicable usage charges. In the case of toll-free service, the customer must pay toll charges for calls received. In the case of toll-free calls, the interexchange carrier then pays originating access

> charges to the originating local exchange carrier. The situation is the same here: the CLEC has set up a toll-free calling arrangement for its customer. The customer is thus able to take advantage of the local exchange service that Verizon is providing in that distant exchange, yet Verizon not only receives no subscriber revenue from the CLEC customer; it is also deprived of the toll charges that would ordinarily apply. Access charges provide the originating LEC some measure of compensation for the service that it provides.

In response to US LEC witness Montano's charge that "Verizon would double-recover for carrying such traffic and it would also be compensated for cost not incurred . . . " Verizon witness Haynes replies that ". . . the costs of delivering traffic to a CLEC depends on the interconnection architecture in place; if a virtual FX call is delivered to the same point of interconnection as a local call from the same point, Verizon's costs of delivering the traffic will be the same. But if the Commission were to exempt the CLEC from paying the access charges that ordinarily apply to such interexchange traffic, the Commission would be encouraging the CLEC to implement these arrangements even when they are inefficient." Witness Haynes continues:

> This is because the CLEC (and the CLEC's customers) would not bear the appropriate costs of providing the services that they consume. Thus, Verizon would have to originate and carry a great deal more traffic, and would therefore be required to bear significantly higher costs, than if access charges were properly applied.
>
> Moreover, Ms. Montano ignores the fact that virtual FX arrangements mean that Verizon will be unable to collect toll charges from its customers where toll charges would apply (but for the assignment of a virtual NXX code). Again, I am not asserting that there is anything wrong with a CLEC setting up such toll free arrangements for its customers, so long as the CLEC complies with

> applicable state and federal regulations. But it is wrong for the CLEC to attempt to shift the costs of those arrangements to Verizon, and it is also wrong to exempt the CLEC and its customers from bearing an appropriate share of the costs of providing local exchange service in the distant exchange. As long as Verizon is the carrier providing that local exchange service, it is entitled to be compensated for it, and access charges provide that compensation.

Witness Haynes concludes that local exchange charges compensate Verizon for providing service within the local exchange. If a call travels outside the local exchange, Verizon should be entitled to additional compensation. Virtual FX service should be no exception.

B. Analysis

We are disappointed that the parties were not able to reach a mutual agreement on this issue despite being urged by us in our Reciprocal Compensation Order to negotiate the best intercarrier compensation mechanism for this type traffic. We are troubled that the parties chose to use this forum to rehash past issues without presenting us with a new or persuasive argument to justify a departure from prior decisions.

Based on the testimony of the parties, it is clear that the parties acknowledge that we found in our Reciprocal Compensation Order that calls to virtual NXX customers located outside of the local calling area to which the NXX is assigned are not considered local calls, and therefore carriers are not obligated to pay reciprocal compensation.[28] Additionally, we agree with Verizon witness Haynes that US LEC's proposal to require payment of reciprocal compensation by reference to the NPA-NXX of the called number, rather than the terminating point of the complete communication, is inconsistent with our ruling on the same issue in

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[28] Order No. PSC-02-1248-FOF-TP, p. 33.

our generic reciprocal compensation docket. Consequently, with respect to part (A) of this issue, we find that the parties shall not pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, even if the NXX of the called number is associated with the same local calling area as the NXX of the calling number.

The remaining element of this issue asks us to resolve the issue of whether the originating carrier should be able to charge originating access for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. In discussing this traffic in Order No. PSC-02-1248-FOF-TP, we stated that ". . . [w]e find that calls terminated to end users outside the local calling area in which their NPA/NXXs are homed are not local calls for purposes of intercarrier compensation; therefore, we find that carriers shall not be obligated to pay reciprocal compensation for this traffic." In this decision the Commission did not ". . . mandate a particular intercarrier compensation mechanism for virtual NXX/FX traffic"; however, the Commission found that ". . . virtual NXX traffic and FX traffic shall be treated the same for intercarrier compensation purposes." Therefore, we find that the originating carrier shall be able to charge originating access on traffic that originates in one local calling area and is delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. We find that this treatment shall also apply to calls to FX numbers.

C. Decision

We find that the parties shall not pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. In addition, we find that the originating carrier shall be able to charge originating access on the traffic described in Issue 6(A). We find that this treatment shall also apply to FX numbers.

VI. COMPENSATION FRAMEWORK FOR ISP-BOUND TRAFFIC

This issue addresses whether the parties' agreement should set forth specific language to address the compensation of ISP-bound traffic in the event the interim compensation framework set forth in the FCC's ISP Remand Order is vacated or reversed.

A. Arguments

US LEC asserts in its brief that in the event the compensation framework in the FCC's ISP Remand Order is vacated or reversed on appeal, the parties should continue to compensate each other at the rates set forth in the Order, but waive any other terms and conditions of that Order (e.g., the growth caps and new market restrictions). US LEC proposes in the interests of certainty and stability, and in order to avoid expensive and time consuming negotiations and litigation, that US LEC is willing to forego the opportunity to be compensated at state rates and proposes that the parties accept the rate structure set forth in the ISP Remand Order for the balance of the term of the agreement, or until the FCC imposes a permanent rate structure governing that traffic. US LEC further asserts that verizon's refusal to accept US LEC's proposal will result in additional negotiation and possibly litigation.

Verizon asserts in its brief that although the D.C. Circuit Court remanded the ISP Remand Order, the Court expressly refused to vacate that order; as a result, the rules the FCC adopted remain in effect pending further FCC proceedings on remand. Verizon asserts further that the ISP Remand Order set forth a specific intercarrier compensation regime that governs the exchange of Internet-bound traffic between Verizon and US LEC during the course of this arbitrated agreement. If there is a subsequent change of law,

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by Verizon Maryland Inc.,	)	
Verizon Washington, D.C. Inc., Verizon West	)	WC Docket No. 02-384
Virginia Inc., Bell Atlantic Communications,	)	
Inc. (d/b/a Verizon Long Distance), NYNEX	)	
Long Distance Company (d/b/a Verizon	)	
Enterprise Solutions), Verizon Global	)	
Networks Inc., and Verizon Select Services	)	
Inc., for Authorization To Provide In-Region,	)	
InterLATA Services in Maryland,	)	
Washington, D.C., and West Virginia	)	

MEMORANDUM OPINION AND ORDER

Adopted: March 18, 2003 **Released:** March 19, 2003

By the Commission: Commissioners Copps and Martin approving in part, concurring in part, and issuing separate statements; Commissioner Adelstein issuing a statement.

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Paragraph

I. INTRODUCTION

1. On December 19, 2002, Verizon Maryland Inc., Verizon Washington, D.C. Inc., Verizon West Virginia Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., collectively Verizon, filed an application pursuant to section 271 of the Communications Act of 1934, as amended,[1] for authority to provide in-region, interLATA service originating in the states of Maryland, West Virginia, and

[1] We refer to the Communications Act of 1934, as amended by the Telecommunications Act of 1996, as the Communications Act or the Act. 47 U.S.C. §§ 151 *et seq.*

Internet Service Provider (ISP) or data LEC, either to determine how the ISP or data LEC can still provide service to the customer or to notify the ISP or data LEC to terminate the service and to stop billing.[567] Additionally, the record shows that a code identifying the data LEC is provided on the customer's CSR, so that the new voice carrier can tell whether Verizon or another data LEC is providing the customer's DSL service.[568] Because nothing in our rules regarding number portability prohibits Verizon's policy of requiring the customer to cancel its DSL and ISP and because Verizon's policy is applied in a nondiscriminatory fashion, we do not find Verizon's policy is a violation of checklist item 11.[569]

F. Checklist Item 13 – Reciprocal Compensation

143. Section 271(c)(2)(B)(xiii) of the Act requires BOCs to enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."[570] In turn, section 252(d)(2)(A) specifies the conditions necessary for a state commission to find that the terms and conditions for reciprocal compensation are just and reasonable.[571] We conclude that Verizon provides reciprocal compensation as required by checklist item 13.

144. We reject the allegation of Xspedius that Verizon fails to meet checklist item 13 because it refuses to provide reciprocal compensation in Washington, D.C. and in Maryland consistent with the Act and the Commission's rules.[572] Xspedius contends that Verizon refuses to pay for transport and termination provided by Xspedius for both voice and Internet-bound traffic.[573] Xspedius argues that, regardless of the other remedies available to Xspedius or alleged

[567] *Id.*

[568] *Id.*

[569] 47 C.F.R. § 52.21 defines the term "number portability" as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." 47 C.F.R. § 52.21. *See also BellSouth Multistate Order*, 17 FCC Rcd at 17680-82, paras. 161-162 (finding that BellSouth's did not need to eliminate a requirement for competitive LECs to remove the DSL USOC before converting UNE-platform customers).

[570] 47 U.S.C. § 271(c)(2)(B)(xiii).

[571] 47 U.S.C. § 252(d)(2)(A).

[572] Xspedius Comments at 2-3.

[573] *Id.* at 3. According to Xspedius, Verizon owes it over $1.5 million for local transport and reciprocal compensation. *Id.* at 2. Xspedius claims that, since June 1, 2002, Verizon has withheld from Xspedius all payments for transport and termination usage charges in Washington, D.C. and Maryland. *Id.* at 3. *See also* Letter from Michael B. Hazzard, Counsel, Xspedius Management Co., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1-4 (filed Jan. 23, 2003) (providing clarification concerning Xspedius' reciprocal compensation claims) (Xspedius Jan. 23 *Ex Parte* Letter).

past due balances, Verizon must pay Xspedius the reciprocal compensation due in order for the Commission to find compliance with checklist item 13.[574]

145. Verizon responds by stating that it is engaged in discussions with Xspedius regarding billing disputes in Washington, D.C. and Maryland, among other places.[575] In Washington D.C. and Maryland, Xspedius is the successor to interconnection agreements between e.spire and Verizon.[576] According to Verizon, the Washington, D.C. interconnection agreement provides that all local and ISP-bound traffic shall be exchanged on a bill-and-keep basis.[577] Verizon further contends that the Maryland interconnection agreement entitles Xspedius to reciprocal compensation for local traffic, but not Internet-bound traffic.[578] Verizon further notes that both Xspedius and e.spire have "significant past due balances with Verizon under their Maryland agreement" and argues that such amounts should be set off against amounts owed by Verizon.[579]

146. As an initial matter, we note that Xspedius did not participate in the Maryland or Washington, D.C. 271 proceedings, and that both the Maryland and the D.C. Commissions determined that Verizon met the requirements of checklist item 13.[580] To the extent that

574 Xspedius Jan. 23 *Ex Parte* Letter at 2. In addition, Xspedius claims that Verizon's refusal to compensate it for Internet-bound traffic is contrary to the public interest. *Id.* at 2-3. *See infra* Section VII.B (Public Interest) for discussions on these alleged public interest violations.

575 *See* Letter from Ann D. Berkowitz, Project Manager - Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1 (filed Jan. 22, 2003) (stating that Verizon would like to resolve these billing disputes through negotiations or litigation before the relevant state commission) (Verizon Jan. 22 *Ex Parte* Letter on pricing issues). *See also* Verizon Reply at 42 n.35; Verizon Lacouture/Ruesterholz Reply Decl., para. 217.

576 Verizon Jan. 22 *Ex Parte* Letter on pricing issues at 2. *See also* Xspedius Comments at 2 (explaining that Xspedius acquired substantially all of the assets of e.spire Communications, Inc. in Maryland and Washington, D.C. in 2002).

577 Verizon Jan. 22 *Ex Parte* Letter on pricing issues at 2. Xspedius acquired the assets of e.spire in Washington, D.C. and Maryland. Xspedius Comments at 3-4 n.7. Verizon and Xspedius reached a settlement regarding reciprocal compensation amounts owed prior to May 31, 2002. Xspedius Comments at 3-4 n.7.

578 Verizon Jan. 22 *Ex Parte* Letter on pricing issues at 2. According to Verizon, paragraph 81 of the *ISP Remand Order* establishes a rule of bill-and-keep for Internet traffic for new entrants and markets in cases where the competitive LEC and the incumbent LEC did not exchange traffic pursuant to an interconnection agreement prior to the adoption on the *ISP Remand Order*. Verizon argues that, because Xspedius did not begin providing telecommunications services in Maryland until December 11, 2002 (after the adoption of the *ISP Remand Order*), the order requires Xspedius and Verizon to exchange Internet-bound traffic on a bill-and keep basis. *Id.* (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) (*ISP Remand Order*)).

579 *Id.*

580 *See* DC Commission Comments at 56-58 (concluding that, despite a payment dispute with AT&T concerning compensation for Internet-bound traffic, Verizon has met the requirements of this checklist item pursuant to section (continued....)

Xspedius and Verizon are unable to resolve their differences in their ongoing negotiations, we find that Xspedius' allegations are best addressed in the first instance in a proceeding to enforce its interconnection agreements.[581] While we do not require parties to raise all pricing issues elsewhere before raising them in a section 271 proceeding, it is both impractical and inappropriate for us to make these sorts of fact-specific findings regarding compliance with interconnection agreements in a section 271 review when the issue was not previously raised in the appropriate forum.[582] Although we have an independent obligation to ensure compliance with the checklist, "section 271 does not compel us to preempt the orderly disposition of intercarrier disputes."[583] We have confidence that the allegations of Xspedius will be resolved in a more appropriate forum consistent with our rules.

147. We also reject, for a separate reason, Xspedius' claim that Verizon must fail checklist item 13 because it refuses to pay reciprocal compensation for Internet-bound traffic. The Commission previously determined that whether a BOC pays reciprocal compensation for Internet-bound traffic "is not relevant to compliance with checklist item 13"[584] because Internet-bound traffic is not subject to the reciprocal compensation provisions of sections 251(b)(5) and 252(d)(2).[585] Although currently subject to remand, our rules regarding the scope of section

(Continued from previous page)
271(c)(2)(B)(xiii)); Maryland Commission Comments, Ex. A at 3 (finding that, subject to certain conditions, Verizon is in compliance with the section 271 checklist).

581 Xspedius indicates that it is engaged in ongoing efforts to settle its dispute with Verizon and states its intent to continue settlement discussions. Xspedius Comments at 2 n.3.

582 *In the Matter of Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services Inc. for Authorization to Provide In-Region, InterLATA Services in California*, WC Docket No. 02-306, Memorandum Opinion and Order, FCC No. 02-330, para. 143 (rel. Dec. 19, 2002) (*Pacific Bell California Order*); *In the Matter of Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Vermont*, CC Docket No. 02-7, Memorandum Opinion and Order, 17 FCC Rcd 7625, 7636, para. 20 (2002) (*Verizon Vermont Order*). *See also Verizon New Jersey Order*, 17 FCC Rcd at 12354, para. 159 (declining to resolve a billing dispute under an interconnection agreement in a section 271 proceeding); *BellSouth Florida/Tennessee Order*, 17 FCC Rcd at 25736, para. 155 (rejecting a claim by KMC that BellSouth is obligated to pay reciprocal compensation for properly disputed charges).

583 *Verizon New Jersey Order*, 17 FCC Rcd at 12354, para. 159 (quoting *Verizon Pennsylvania Order*, 16 FCC Rcd at 17484, para. 118); *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20776, para. 115.

584 *Verizon Connecticut Order*, 16 FCC Rcd at 14177, para. 67. *Accord Verizon Pennsylvania Order*, 16 FCC Rcd at 17484, para. 119; *Verizon Massachusetts Order*, 16 FCC Rcd at 9108-09, para. 215.

585 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 96-98, 14 FCC Rcd 3689 at 3706, para. 26 n.87 (1999) (*Reciprocal Compensation Declaratory Ruling*), *rev'd and remanded sub nom. Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000), *decision on remand, ISP Remand Order*, 16 FCC Rcd 9151, 9167, 9171-72, paras. 35, 44 (2001), *rev'd and remanded sub nom. WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

251(b)(5) remain in effect. Accordingly, we reject Xspedius' claim of checklist noncompliance based on Verizon's refusal to pay reciprocal compensation for Internet-bound traffic.[586]

148. FiberNet argues that Verizon's refusal to pay reciprocal compensation for Internet-bound traffic in West Virginia violates checklist item 13.[587] Specifically, FiberNet contends that Verizon has refused to compensate FiberNet for minutes exceeding the 3:1 ratio established by the Commission in the *ISP Remand Order* and has refused to negotiate any alternative mechanism regarding compensation for these minutes.[588] Verizon maintains that Internet-bound traffic is not subject to section 251(b)(5), which means that reciprocal compensation for such traffic is not an issue under the checklist.[589] The West Virginia Commission considered this issue and concluded that Verizon satisfies checklist item 13.[590] Based on the record before us, we agree. As discussed above, whether a carrier pays reciprocal compensation for Internet-bound traffic is irrelevant to checklist item 13. Moreover, the West Virginia Commission stated that parties to such disputes are free to "raise those disputes with the [West Virginia] Commission in an appropriate proceeding."[591] FiberNet filed a petition with the West Virginia Commission raising this issue, and the matter is now pending before the state commission.[592] There is no evidence on the record before us that warrants our interfering with a pending state proceeding addressing this dispute.

149. Starpower alleges that Verizon is in violation of checklist item 13 because Verizon's Model Interconnection Agreements for Maryland, Washington, D.C., and West Virginia contain provisions excluding payment of reciprocal compensation for virtual foreign exchange (FX) traffic.[593] Virtual FX service allows callers from a distant incumbent LEC rate

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586 *See In the Matter of Joint Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana,* CC Docket No. 02-35, Memorandum Opinion and Order, 17 FCC Rcd 9018, 9173, para. 272 (2002) (*BellSouth Georgia/Louisiana Order*); *Verizon New Jersey Order*, 17 FCC Rcd at 12354, para. 160.

587 *See* FiberNet Comments at 61-63. FiberNet argues that, "until Verizon-WV is made to comply with the applicable orders issued by both the Commission and the Public Service Commission of West Virginia, it cannot be deemed to be in compliance with Checklist Item 13." *Id.* at 63.

588 *Id.* at 62.

589 Verizon Reply at 41; Verizon Lacouture/Ruesterholz Reply Decl., para. 218. Verizon adds that FiberNet has never attempted to rebut the presumption that traffic exceeding the 3:1 ratio was Internet-bound traffic. Verizon Lacouture/Ruesterholz Reply Decl., para. 218.

590 *See* West Virginia Comments at 101-03. Citing our prior section 271 orders, the West Virginia Commission concluded that disputes regarding reciprocal compensation for Internet-bound traffic are irrelevant to checklist item 13. West Virginia Commission Comments at 103.

591 *Id.* at 103.

592 Verizon Lacouture/Ruesterholz Reply Decl., para. 218.

593 Starpower/US LEC Comments at 26

center to reach a virtual FX subscriber without incurring toll charges.[594] To accomplish this, competitive LECs simply assign their virtual FX customers an NPA-NXX associated with the rate center designated by the subscriber and rely on their switches' broad coverage to complete calls between incumbent LEC rate centers.[595] Starpower notes that the *Virginia Arbitration Order* concluded that Verizon had proposed "no viable alternative to the current toll rating system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes."[596] Starpower asserts that under the current toll rating system, Verizon is obligated to pay reciprocal compensation for virtual FX calls.[597] Starpower argues that Verizon still has no viable alternative to the current toll rating system, and it consequently has no basis to exclude virtual FX calls from eligibility for reciprocal compensation.[598]

150. Verizon responds that virtual FX traffic is non-local access traffic for which Verizon has no obligation to pay reciprocal compensation under sections 251(b)(5) and 252(d)(2) of the Act.[599] Verizon argues that because it has no obligation to pay reciprocal compensation for this traffic, Starpower's argument that Verizon does not pay reciprocal compensation for virtual FX traffic is not relevant under checklist item 13.[600]

151. The Commission has not had occasion to determine whether incumbent LECs have a duty to pay reciprocal compensation for virtual FX traffic under section 252(d)(2), and we find no clear Commission precedent or rules declaring such a duty.[601] As we have found in

594 *See* Letter from Ann D. Berkowitz, Project Manager - Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1 (filed Jan. 29, 2003) (Verizon Jan. 29 *Ex Parte* Letter on virtual FX traffic).

595 Traditional FX service, by comparison, occurs when the ILEC connects the subscribing customer, via a dedicated private line for which the subscriber pays, to the end office switch in the distant rate center from which the subscriber wishes callers to be able to reach him without incurring the toll charges.

596 Starpower/US LEC Comments at 26 (quoting *Virginia Arbitration Order*, para. 301).

597 *See id.*

598 *See id.*

599 Verizon argues that these calls traverse two rate centers and therefore implicate the CLEC's obligation to pay access charges. *See* Verizon Jan. 29 *Ex Parte* Letter on virtual FX traffic at 1-2.

600 Verizon argues that virtual FX traffic, like ISP-bound traffic, is not subject to section 251(b)(5) and therefore, as with ISP-bound traffic, a BOC's payment of reciprocal compensation is not relevant to compliance with checklist item 13. *See id.* at 2.

601 In the *Virginia Arbitration Order*, in choosing between the two sides' proposals, the Bureau adopted contract language one consequence of which was to subject virtual FX calls to reciprocal compensation. The Bureau did not, however, address the legal question of whether incumbent LECs have an obligation under section 252(d)(2) to provide reciprocal compensation for virtual FX traffic. *See Virginia Arbitration Order*, paras. 286-288. We note that the issue of compensation for virtual FX traffic has been raised and may ultimately be resolved in our intercarrier compensation proceeding. *See Intercarrier Compensation Regime NPRM*, 16 FCC Rcd at 9652, para. 115.

previous proceedings, given the applicable time constraints, the section 271 process simply could not function if we were required to resolve every interpretive dispute between a BOC and each competitive LEC about the precise content of the BOC's obligations to its competitors.[602] Starpower does not allege that Verizon has refused to compensate it or any other interconnecting carrier for virtual FX traffic in the subject states, nor does Starpower allege that Verizon has refused to negotiate such an arrangement.[603] To the extent Starpower has such a claim, a complaint before the state commission, or this Commission pursuant to section 208, is the more appropriate means for raising such allegations.[604] We decline to resolve Starpower's claim in the context of this proceeding.

152. We therefore reject the claims of Xspedius, FiberNet, and Starpower concerning Verizon's failure to pay reciprocal compensation and conclude that, with regard to these claims, Verizon has met its obligations under checklist item 13.

G. Checklist Item 14 – Resale

153. Section 271(c)(2)(B)(xiv) of the Act requires that a BOC make "telecommunications services . . . available for resale in accordance with the requirements of section 251(c)(4) and section 252(d)(3)."[605] Based on the record in this proceeding, we conclude as did the state commissions,[606] that Verizon satisfies the requirements of this checklist item.[607] Verizon has demonstrated that it has satisfied its legal obligation to make retail telecommunications services available for resale to competitive LECs at wholesale rates. No commenters question Verizon's showing of compliance with the requirements of this checklist item except in the areas of directory assistance in Maryland and call blocking services, which we discuss below.

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602 *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17475, para. 101; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6355, para. 230.

603 We note that parties to an interconnection agreement have been and remain free to negotiate compensation arrangements for virtual FX traffic pursuant to sections 251 and 252.

604 *See e.g., BellSouth Multistate Order*, 17 FCC Rcd at 17717, para. 218. *See also Starpower Communications, Inc. v. Verizon-South, Inc.*, File No. EB-00-MD-019 (filed June 7, 2002).

605 47 U.S.C. § 271(c)(2)(B)(xiv). *See* Appendix F, para. 67.

606 Maryland Commission Comments, Ex. A at 3; D.C. Commission Comments at 59; West Virginia Commission Comments at 103.

607 Verizon has a concrete and specific legal obligation in its interconnection agreements and tariffs to make its retail services available for resale to competing carriers at wholesale rates. *See* Verizon Lacouture/Ruesterholz Maryland Decl., para.341; Verizon Lacouture/Ruesterholz D.C. Decl., para. 330; Verizon Lacouture/Ruesterholz West Virginia Decl., para. 330.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 2003, copies of the foregoing "Verizon Additional Authority Letter" were sent by first class mail, postage prepaid, to the parties on the attached list.

Eric Fitzgerald Reed

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